

Amie GRMOLJER 943.6820
OPPOSE HB 597
MOTION PICTURE ASSOCIATION

SENATE JUDICIARY
Exhibit No. 10
Date 4-4-07
Bill No. HB 597

COMMUNITY STANDARDS

WHAT IS IT? Legislation that amends the state obscenity statute, changing the community standard to be used by a jury when making an obscenity determination in a criminal prosecution from the entire state to the local jurisdiction (county, jury district, etc.) in which the material is sold.

WHY DO WE OPPOSE SUCH LEGISLATION? Guessing at a patchwork of inconsistent local standards would severely hamper distribution of all works of free expression and increase the cost of distribution. With local community standards, distributors of materials with depictions of sensuality or sexuality can never know what a local prosecutor will select for prosecution, and can hardly guess at, much less know with any degree of certainty, what subjective standard a six or twelve person jury in any given community will devise.

KEY ARGUMENTS: Popular movies may not be distributed because of the fear of criminal prosecution. For example, movies containing sensuality such as *Schindler's List*, *Basic Instinct*, *Jerry Maguire* or *Pretty Woman* may not be distributed to certain parts of the state. Self-censorship because of the fear of legal consequences violate the First Amendment as much as laws that directly ban certain speech.

This statute could provide tools to groups dedicated to the advancement of censorship. Seeking to impose their own social and religious doctrines on all Americans, special interest groups dedicated to banning art and entertainment containing depictions of sexuality or other matter they deem offensive will have a strong tool if this bill is enacted because they will have a multitude of different opportunities to deny access to specific material.

Harassment and intimidation by law enforcement officials as a result of complaints filed under this statute by pro-censorship groups would represent a severe and unwarranted hardship for theaters, video stores, cable operators and television broadcasters. If a small retailer elected to fight an actual prosecution in court, legal defense costs alone could cause many to go out of business.

So-called "red light districts" could be created if a "community standard" in one locality is deemed more conservative than a community standard in a neighboring community.

A majority of states have statewide community standards as opposed to local community standards.

IMPORTANT COURT CASES: Unfortunately, it is constitutionally permissible for states to change their community standard from a statewide to a local community standard. However, the following state court cases overturned local community standards laws:

People v. Llewellyn, 401 MICH, 314 (Oct. 1977)
State v. Henry, 732 P. 2D at 10 (1987)